

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARTHUR LOUIS STANLEY,

Defendant-Appellant.

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UNPUBLISHED

April 15, 2004

No. 243819

Wayne Circuit Court

LC No. 01-013129

Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of armed robbery, MCL 750.529, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A defendant's timely request to wear civilian clothing at trial must be granted. *People v Harris*, 201 Mich App 147, 151; 505 NW2d 889 (1993). We review a trial court's decision to deny a request to change clothing for an abuse of discretion, where the court determines, as here, that the defendant's clothing is not identifiable as prison garb. *Id.* To justify reversal on the basis of improper attire in such a situation, a defendant must demonstrate that prejudice resulted from the appearance of his or her clothing at trial. See *id.* at 152.

Defendant argues that the trial court denied him a fair trial by requiring him to appear at trial in jail clothing. We disagree. Defendant's mother did not appear as scheduled with civilian clothing for defendant to wear at trial. The trial court took steps to locate appropriate civilian clothing, but when the effort proved unsuccessful, the trial court instructed defendant to reverse his clothing to conceal the jail markings. Defendant has failed to show that he was prejudiced by the appearance of his clothing, and no abuse of discretion occurred.

The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). A claim of prosecutorial misconduct is reviewed de novo. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001). No error requiring reversal will be found if the prejudicial effect of the prosecutor's remarks could have been cured by a timely instruction. *People v Leshaj*, 249 Mich App 417, 419; 641 NW2d 872 (2002).

Police officers have a special duty to refrain from making prejudicial and irrelevant remarks during their testimony. *People v Holly*, 129 Mich App 405, 415-416; 341 NW2d 823 (1983). Such testimony, even if it is nonresponsive, may require reversal, *People v O'Brien*, 113 Mich App 183, 209; 317 NW2d 570 (1982), unless the other evidence clearly establishes the defendant's guilt. *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000).

Defendant argues that the prosecutor committed misconduct by eliciting improper testimony from a police officer that he knew defendant from previous "run-ins." We disagree. Nothing in the record demonstrates that the prosecutor knew in advance that the officer would give such testimony. Even assuming that the officer's unresponsive testimony constituted error, reversal is not warranted because the other evidence clearly established defendant's guilt. The hotel clerk identified defendant as one of two men who robbed the hotel. Defendant left his wallet and identification at the scene. The jury was entitled to accept the clerk's testimony and to reject the testimony given by defendant and his mother that defendant was at home when the robbery occurred. *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). In light of both the strength of the other evidence, *Snider*, *supra*, and the fact that the trial court immediately instructed the jury to disregard the remark, *Leshaj*, *supra*, any error was harmless.

We review jury instructions in their entirety to determine whether the trial court committed error requiring reversal. Even if somewhat imperfect, instructions do not create error if they fairly presented the issues for trial and sufficiently protected the defendant's rights. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). We review a claim of instructional error de novo. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002).

Defendant argues that his conviction must be reversed because at one point the trial court erroneously instructed the jury that if it concluded that reasonable doubt existed, it was required to find him guilty. We disagree. Defendant failed to object to the trial court's apparent misstatement; therefore, absent plain error, he is not entitled to relief. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). The trial court erroneously instructed the jury on one occasion, but on two other occasions correctly instructed the jury that if reasonable doubt existed, defendant was entitled to a verdict of not guilty. The jury expressed no confusion over the instructions, and the evidence against defendant was substantial. The isolated error, if it occurred, was not plain and does not warrant reversal of defendant's conviction. *Id.*

Affirmed.

/s/ Mark J. Cavanagh  
/s/ William B. Murphy  
/s/ Michael R. Smolenski